

## **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Office Action dated September 1, 2004 are respectfully requested.

Applicant's attorney appreciates the telephone interview with the Examiner on October 29, 2004 to discuss the cited references and claims pending at that time. Claims 1-20 have been amended to increase clarity of the claimed subject matter. Claims 21-24 are newly presented. No new matter has been added. Claims 1-24 are currently pending in this application.

### **I. Rejections under 35 U.S.C. § 103**

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,152,551 (Annas) in view of U.S. Patent No. 5,887,388 (Hempel). Claims for an invention are not *prima facie* obvious if the primary references do not suggest all elements of the claimed invention and the prior art does not suggest the modifications that would bring the primary references into conformity with the application's claims. *In re Fritch*, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992); *In re Laskowski*, 871 F.2d 115 (Fed. Cir. 1989). Applicant submits that the cited references can not support a *prima facie* case of obviousness.

Annas is drawn to a storage device for a video display. The storage device is a furniture-grade cabinet, such as an entertainment center or armoire. Nowhere does Annas teach or suggest any kind of a fireplace unit, such as the type used as a free-standing structure or installed in a receiving structure as claimed. The reference does not provide any discussion of any components of a fireplace unit. Annas is directed to furniture, not fireplaces. It is non-analogous art and can not be properly used to form the basis of a Section 103 rejection.

Hempel discloses a system for installing a gas fireplace and associated cabinetry, wherein a template is used to first install the gas fireplace before adding the associated cabinetry around the fireplace template. Hempel mentions only generally about a gas fireplace 12 that could be mounted on the template about which the resulting cabinetry can be built. Hempel provides the general references to the gas

fireplace 12, but does not provide details about components of the fireplace as set forth and claimed in the present application.

Neither reference discloses, teaches or suggests a fireplace unit of the type for use as a freestanding fireplace unit (see, for example, Figures 8 and 9 of the present application), a fireplace insert, or a fireplace, wherein the fireplace unit has an outer shell, a fire box in the outer shell with an opening in communication with a fire containment area, and a cover panel attached to the outer shell or the fire box, wherein the cover panel on the fireplace unit has the first and second transmittance of light as claimed. The references are simply silent regarding fireplace unit as claimed. If the references would be properly combined in this case, the references still don't teach the fireplace unit as claimed.

Further, the references do not suggest any modifications to the gas fireplace 12 that would bring the gas fireplace into conformity with the pending claims. Any such modifications of the teachings of Annas and Hempel could only be done with the benefit of impermissible hindsight analysis and by using the current application as a template for piecemeal construction of components, many of which are not even mentioned in either reference. Therefore, Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness, and the rejections should be withdrawn.

## **II. Conclusion**

In view of the foregoing, the pending claims are patentable over the cited art. Applicants accordingly request reconsideration of the application and issuance of a Notice of Allowance. If the Examiner has any questions or believes a telephone

conference would expedite prosecution of this application, the Examiner is encouraged to call Robert G. Woolston at (206) 359-3259.

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Respectfully submitted,

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